

January 27, 2022

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Dr. Nichelle Williams
Director of Research
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200
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Submitted electronically via www.regulations.gov and via email

**Re: Comments on National Mail Voter Registration Data Collection, Docket Number:
EAC-2021-0002**

Dear Dr. Williams,

On behalf of the Alliance for Retired Americans (“The Alliance”), I write to comment on the proposed information to be collected through the Election Assistance Commission (“EAC”) National Voter Registration Form and certain accompanying state instructions, as detailed in the EAC’s Federal Register Notice published at 86 Federal Registrar 67694 on November 29, 2021.

As explained below, because the EAC’s instructions for completing voter registration applications in Kentucky, New Mexico, Tennessee, and Virginia require voters to provide full social security numbers (“SSN”), those instructions violate Section 9 of the National Voter Registration Act (“NVRA”). Section 9 prohibits states from requesting more information than is necessary to assess eligibility to vote. And full SSNs are not necessary to assess eligibility. For similar reasons, those same instructions violate Section 1971 of the Voting Rights Act (“VRA”) and the Privacy Act of 1974 (“Privacy Act”). Requiring full SSNs also unconstitutionally burdens the right to vote and infringes on the freedoms of speech and association.

The Alliance is a national grassroots organization with 4.3 million members working to ensure social and economic justice, full civil rights, and retirement security for all Americans.¹ The Alliance and its members have serious concerns about the widespread and growing risks of identity theft among the American public.² Rampant scams involve obtaining, selling, and using the SSNs

¹ See Alliance for Retired Americans, About Us, <https://retiredamericans.org/about/>.

² See Alliance for Retired Americans, Older Homeowners Experience Surge in Predatory Solicitations, <https://retiredamericans.org/older-homeowners-experience-surge-in-predatory-solicitations/>; Alliance for Retired Americans, News: COVID Scams Targeting Seniors Continue Despite a Majority of Seniors Being Vaccinated, <https://retiredamericans.org/news-covid-scams-targeting-seniors-continue-despite-a-majority-of-seniors-being-vaccinated/>.

of unassuming Americans.³ Those scams have the potential, not only to bleed victims of their financial resources, but also to obtain credit and loans in their name, use their health insurance, and even expose them to prosecution for the crimes of the scammers.⁴

The Alliance is not alone in those concerns. In 2017, Congress enacted the Social Security Number Fraud Prevention Act.⁵ The Act seeks to minimize the unnecessary use of SSNs by prohibiting government agencies from including them on documents sent by mail.⁶ During legislative hearings on the bill, members of congress heard that 18 million Americans become victims of identity theft each year.⁷ The number of Americans whose personally identifiable information is compromised is even higher. In a single breach of the Office of Personnel Management's data in 2015, "the personally identifiable information for 22 million Americans was compromised."⁸

To combat identity theft, the Social Security Administration recommends that Americans do not carry any documents listing their SSNs, do not say those numbers aloud in public, and treat any request for their SSN with serious skepticism.⁹ And Americans are listening. Americans have become increasingly reluctant to provide their full SSNs, even to government agencies.¹⁰ For example, in response to growing concerns, the Census Bureau was forced to drop the requirement of SSNs on its surveys to ensure that low response rates did not compromise the data collected.¹¹

Election databases are particularly vulnerable to those attacks. Leading up to the 2016 presidential election, foreign state actors attempted to infiltrate the elections systems of all 50 states.¹² In at

³ See Social Security Administration, Social Security: Fraud Prevention and Reporting, <https://www.ssa.gov/fraud/>; see also Office of the Inspector General, Social Security Administration, Scam Awareness, <https://oig.ssa.gov/scam/>.

⁴ *Id.*

⁵ Public Law 115-59, September 15, 2017, 131 Stat 1152.

⁶ *Id.*

⁷ 163 Cong. Rec. H4533-01, 163 Cong. Rec. H4533-01, H4533.

⁸ *Id.*

⁹ See Social Security Administration, Social Security: Fraud Prevention and Reporting, <https://www.ssa.gov/fraud/>; see also Office of the Inspector General, Social Security Administration, Scam Awareness, <https://oig.ssa.gov/scam/>.

¹⁰ See Jennifer McNabb et al., *Uses of Administrative Data at the Social Security Administration*, 69 SOCIAL SECURITY BULLETIN 1, <https://www.ssa.gov/policy/docs/ssb/v69n1/v69n1p75.html>.

¹¹ *Id.*

¹² U.S. Senate, Report of the Select Comm. on Intelligence, 116th Cong., Rep. on Russian Active Measures Campaigns and Interference in the 2016 U.S. Election Volume Case 3:21-cv-00756 Document 1 Filed 12/07/21 Page 16 of 41 PageID# 16 RETRIEVED FROM DEMOCRACYDOCKET.COM - 17 - 1: Russian Efforts Against Election Infrastructure with Additional Views (2019), https://www.intelligence.senate.gov/sites/default/files/documents/Report_Volume1.pdf. 50.

least 21 states, hackers attempted to gain access to voter registration databases.¹³ And in two of those states, the hackers were successful. Such attacks are far from over—government officials have warned of future attacks on our elections systems.¹⁴

Despite the dangers associated with disclosure of SSNs, the EAC’s instructions for completing the National Voter Registration Form in at least four states—Kentucky, New Mexico, Tennessee, and Virginia—require voters to provide their full SSNs.¹⁵ States that require full SSNs on voter registration applications are increasingly facing litigation.¹⁶ In fact, just last year, a fifth state agreed to discontinue its use of the full SSNs for voter registration purposes in response to a federal lawsuit.¹⁷

The EAC’s National Voter Registration Form and accompanying instructions requiring full SSNs on voter registration applications are not only dangerous, they are illegal and unconstitutional.

First, the EAC’s National Voter Registration Form and accompanying instructions violate the NVRA and the VRA because full SSNs are not necessary or material to determining an applicant’s eligibility to vote. The NVRA requires the EAC to create a National Voter Registration Form, a uniform application that voters can use to register by mail or in-person at designated locations.¹⁸ The NVRA sets out a broad framework for the contents of that form, including specifying certain items that must be included on the form, along with other items that cannot be.¹⁹ Although states may create their own voter registration forms for federal elections, those forms must meet the same criteria as the federal form.²⁰ And Section 9 of the NVRA prohibits voter registration forms from requiring information that is not “necessary to enable the appropriate State election official to

¹³ *Id.*

¹⁴ *See, e.g.*, Nat’l Conference of State Legislatures, Don’t Sleep on Election Cybersecurity (Cyber Criminals Won’t) (April 6, 2021), <https://www.ncsl.org/research/elections-and-campaigns/don-t-sleep-on-electioncybersecurity-cyber-criminals-won-t-magazine2021.aspx>.

¹⁵ *See* U.S. Election Assistance Commission, Register To Vote In Your State By Using This Postcard Form and Guide, https://www.eac.gov/assets/1/6/Federal_Voter_Registration_ENG.pdf.

¹⁶ *See, e.g.*, *Schwieb v. Cox*, 412 F. Supp. 2d 1266, 1273 (N.D. Ga. 2005), *aff’d*, 439 F.3d 1285 (11th Cir. 2006); Complaint, *Democratic Party of Virginia et al. v. Brink, et al.*, No. 21-cv-00756 (E.D.Va. December 17, 2021).

¹⁷ *See* Seanna Adox, SC voters can register without giving full Social Security number, following lawsuit, *The Post & Courier* (Jan. 17, 2020), available at https://www.postandcourier.com/politics/sc-voters-can-register-without-giving-full-socialsecurity-number-following-lawsuit/article_28faa696-3939-11ea-8071-732dc2e17cee.html.

¹⁸ 52 U.S.C. §§ 20504; 20508.

¹⁹ *Id.* § 20508.

²⁰ *Id.* § 20505(a)(2).

assess the eligibility of the applicant and to administer voter registration and other parts of the election process.”²¹

Likewise, Section 1971 of the Voting Rights Act provides that:

No person acting under color of law shall . . . deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election.²²

Full SSNs are not necessary or material in determining whether a voter registration applicant is eligible to vote.²³ As the consistent practice in all 46 other states and the requirements of the Help America Vote Act (“HAVA”) demonstrate, an applicant’s name, date of birth, and the last four digits of a voter’s SSN are more than sufficient to determine voter eligibility.²⁴ Full SSNs provide no additional necessary or material information.

Second, the EAC’s National Voter Registration Form and accompanying instructions violate the Privacy Act.²⁵ The Privacy Act prohibits any federal, state, or local government agent from “deny[ing] to any individual any right, benefit, or privilege provided by law because of such individual’s refusal to disclose his social security account number.”²⁶ When Congress passed that law four decades ago, it marked fraud involving the use of SSNs as “one of the most serious manifestations of privacy concerns in the Nation.”²⁷

Although there is a limited “grandfather” provision in the Privacy Act, at least three of the four states currently requiring full SSNs do not satisfy it. The Privacy Act permits a state to claim an exception from the Act’s requirements if it: (1) maintained a system of records before January 1, 1975, and (2) required the disclosure of an individual’s full SSN to verify an individual’s identity

²¹ *Id.* §§ 20504(c)(2)(B); 20508(b)(1).

²² 52 U.S.C. § 10101(a)(2)(B).

²³ *See, e.g., Schwier*, 412 F. Supp. 2d at 1276 (holding disclosure of voter’s social security number is not “material” in determining whether a person is qualified to vote under Georgia law for purposes of the Voting Rights Act); *McKay v. Altobello*, No. 96-3458, 1997 WL 266717, at *3 (E.D. La. May 16, 1997) (holding that Louisiana violated the NVRA by requiring voter registration applicants to provide their social security numbers).

²⁴ 52 U.S.C. § 21083(a)(5)(A)(i)(II).

²⁵ U.S.C. § 552a.

²⁶ *Id.*

²⁷ *See* S. Rep. No. 93-1183, reprinted in 1974 U.S.C.C.A.N. 6916, 6943.

under that system.²⁸ Courts have found states that have not uniformly required full SSNs on voter registration applications do not satisfy the Privacy Act’s limited exception.²⁹ And neither Kentucky, New Mexico, nor Virginia have consistently required the disclosure of SSNs on voter registration applications.³⁰

Third, the EAC’s National Voter Registration Form and accompanying instructions violate the Fourteenth Amendment because they impose unconstitutional burdens on the right to vote in Kentucky, New Mexico, Tennessee, and Virginia. To determine whether a state law imposes an undue burden on the right to vote, federal courts apply the *Anderson-Burdick* balancing test, which “weigh[s] ‘the character and magnitude of the asserted injury to the rights . . . that the plaintiff seeks to vindicate’ against ‘the precise interests put forward by the State as justifications for the burden imposed by its rule,’ taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’”³¹ Providing a full SSN requires voters to put their identity at risk. And states have no interest in requiring more than the last four digits of voters’ SSNs. When Congress passed HAVA, it instructed states to confirm an applicant’s eligibility to vote with that individual’s driver’s license number, or, if that number was unavailable, only the last four digits of that individual’s SSN.³²

Fourth, the EAC’s National Voter Registration Form and accompanying instructions violate the First Amendment because requiring full SSNs on voter registration applications unconstitutionally infringes on the speech and association rights of voter advocacy organizations. Activities aimed at encouraging voters to participate in the political process are constitutionally protected speech and

²⁸ U.S.C. § 552a.

²⁹ See, e.g., *Schwier*, 412 F. Supp. 2d at 1273 (N.D. Ga. 2005) (“The Court cannot say that Georgia required disclosure of one’s SSN for voter registration based on the fact that only 24 counties—out of 159—required such disclosure.”); *McKay v. Altobello*, No. 96-3458, 1997 WL 266717, at *2 (E.D. La. May 16, 1997) (holding that, although Louisiana’s voter registration form contained a space for an applicant’s social security number, the evidence “[did] not support the contention that the information was actually provided by the applicants”).

³⁰ See Ky. Rev. Stat. Ann. § 116.155 (“The registration form shall include the voter’s . . . Social Security number” but “[n]o person shall be denied the right to register because of the failure to include his Social Security number.”); N.M. Stat. Ann. § 1-4-5.4 (requiring a full social security number only for online registrations, not paper registration); *To Amend Title 5, United States Code, to Provide that Individuals be Apprised of Records Concerning Them Which Are Maintained by Government Agencies: Hearing on H.R. 9527 and Related Bills Before the Subcomm. of the H. Comm. on Government Operations*, 92nd Cong. 166 (1972) (“H.R. 9257 Hearing”) (reflecting statement from Commonwealth of Virginia citizen who refused to provide a social security number but was nonetheless permitted to vote on three different occasions”).

³¹ *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)).

³² 52 U.S.C. § 21083(a)(5)(A)(i)(II).

association.³³ The U.S. Supreme Court has applied “exacting scrutiny” to review laws governing election-related speech.³⁴ Thus, restrictions on such speech are unconstitutional when they “significantly inhibit” election-related speech and association and are “not warranted by the state interests . . . alleged to justify [the] restrictions.”³⁵ Requiring full SSNs on voter registration applications inhibits organizers’ ability to conduct voter registration activities. At best, organizers must implement complex procedures to ensure that SSNs are not compromised. At worst, those organizations may be entirely unable to convince voters to provide their SSNs at all.

Voter registration remains a threshold barrier to participating in the electoral process in nearly every state. To ensure safe access to registration, and the right to vote, the EAC should revise the instructions accompanying its National Voter Registration Form to be consistent with the U.S. Constitution and federal law.

Sincerely,

Perkins Coie LLP

Karl J. Sandstrom
Stephanie Command

KJS:sic

³³ See *Buckley v. Am. Const. L. Found.*, 525 U.S. 182, 186 (1999); *Meyer v. Grant*, 486 U.S. 414, 421 (1988).

³⁴ See *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 345 (1995); see also *League of Women Voters v. Hargett*, 400 F. Supp. 3d 706, 722 (M.D. Tenn. 2019) (“[L]aws that govern the political process surrounding elections—and, in particular, election-related speech and association—go beyond merely the intersection between voting rights and election administration, veering instead into the area where ‘the First Amendment has its fullest and most urgent application.’”) (quoting *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989)).

³⁵ *Buckley, Inc.*, 525 U.S. at 192.